

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:11-CR-225-BO

UNITED STATES OF AMERICA, :
 :
 v. :
 :
JOSPEH KIRKSHAW STEWART :

ORDER FOR DISMISSAL

Pursuant to Rule 48(a) of the Federal Rules of Criminal Procedure and by leave of Court endorsed herein, the United States Attorney for the Eastern District of North Carolina, hereby dismisses Count One of the Indictment against the above-captioned defendant for the following reasons:

In light of United States v. Simmons, F.3d. , No. 08-4475, 2011 WL 3607266 (4th Cir. 2011)(en banc), the defendant's prior convictions were not punishable by imprisonment for a term exceeding one year, and thus his prior convictions were not predicate convictions pursuant to Title 18, United States Code, Section 922(g)(1). As a result, the defendant cannot be prosecuted for felon in possession of a firearm unde federal law.

Respectfully submitted this 6th day of January, 2012.

THOMAS G. WALKER
United States Attorney

/s/ Jane J. Jackson
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Leave of Court is granted for the filing of the foregoing
dismissal.

Terrence W. Boyle
TERRENCE W. BOYLE
United States District Judge

DATE: 1-8-12